(2009) 08 KL CK 0022

In the High Court Of Kerala

Case No : A.S. No. 819 of 1998

L.I.C. of India — APPELLANT

Vs

Dr. Chandy Joseph — RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:
Insurance Act, 1938 — Section 45

Citation : (2009) 3 KLJ 165

Hon'ble Judges : V. Ram Kumar, J

Bench : Single Bench

Advocate : S. Easwaran and Siby P. Jose, for the Appellant; C.K. Koshy and R. Azad Babu, for the Respondent

Final Decision : Allowed

Judgement

V. Ram Kumar, J.—The defendant in O.S. No. 181 of 1995 on the file of the Sub court, Alappuzha is the appellant in this appeal. The appellant is the Alappuzha Branch of the Life Insurance Corporation of India falling under its Kottayam division.

2. The aforesaid suit, instituted by the respondent herein was one for immediate realisation of a sum of Rs. 50,000/- (50% of the amount assured) together with interest at the rate of 18% per annum from 9.12.1994 and also for a mandatory injunction directing the defendant to comply with the provisions of Ext.A1 Policy of Insurance and to pay 10% of the sum assured every year commencing from the Policy anniversary.

3. The facts leading to the present litigation can be summarised as follows:

The respondent/plaintiff is a Dental Surgeon practicing at Alappuzha. He obtained Ext.Al Policy of Insurance dated 8.2.1994 under a Scheme called "Asha Deep Policy". The proposal for the Policy of Insurance, was submitted on 21.11.1993. The Policy was for a sum of Rs. 1,00,000/- (Rupees One lakh only) with a period of maturity of 15 years. The plaintiff wanted the date of commencement of the risk under the Policy to be back-dated to 28.10.1993. The date of commencement of the risk under the Policy was accordingly fixed as 28.10.1993. The 1st premium of Rs. 7708/- was paid by the plaintiff on 22.11.1993, that is, the day subsequent to the day on which the proposal was submitted. The proposal was accepted and the 1st premium was also accepted by the Life Insurance Corporation on 1.12.1993. The date of issue of the Policy was 8.2.1994, which is the date which Ext.A1 Policy bears. The date of its maturity was on 28.10.2008. As per Clause 11(b) of Ext.A1 Policy, Benefit B of the Policy Schedule, could be availed by the insured (plaintiff) on the occurrence of the contingencies including open-heart by-pass surgery mentioned therein. However, as per Clause 11(a), it was indicated that Benefit B of the Policy Schedule would not be applicable, if any of the contingencies mentioned in Clause 11(b) occurred-

i. at any time on or after the date on which the risk under the Policy is commenced but before the expiry of one year reckoned from the date of the Policy or

ii. one year from the date of revival.

The plaintiff underwent an open-heart Bypass surgery on 23.11.1994. Thereafter, the plaintiff gave ExtA4 claim dated 9.12.1994 to the LIC stating that he had undergone Goronary Angiography on 22.11.1994 and open heart By-pass surgery on 23.11.1994 at the. Institute of Cardio Vascular Deceases, Madras. He, therefore, made a claim of Benefit B under, Ext.Al Policy. The claim was rejected by the LIC as per Ext. A7 letter dated 14.2.1995 for the reason that the surgery undergone by the plaintiff was within the lien period of one year from the date of Policy by virtue of Clause 11(a) of Ext.Al Policy. Thereupon, the plaintiff instituted the present suit on 21.6.1995 praying for the aforementioned reliefs. The plaintiff contended that the contract between the parties was to insure the plaintiff from 28.10.1993 for 15 years and it was not from 1.12.1993 when the proposal was accepted or from 8.12.1994 when Ext.A1 Policy was issued and that the one year lien period expired on 28.10.1994 and consequently the open heart Surgery undergone by the plaintiff was liable to be indemnified as per Benefit B in Ext.A1 Policy.

The appellant/LIC resisted the suit, contending, inter alia, as follows:

Even though the proposal from the plaintiff was received by the defendant on 21.11.1993 for the As ha Deep Plan and payment of the 1st premium of Rs. 7708/-towards the proposal was deposited on 22.11.1993, the proposal was accepted and the 1st premium was received only on 1.12.1993 and the Policy was actually issued on 8.2.1994. As per Clause 11(a) of the terms and conditions of Ext.A1 Policy, Benefit B under the policy schedule would hot be applicable if any of the contingencies including the open heart surgery mentioned in Clause 11(b) occurred at any time on or after the date on which the risk under the Policy commenced and before the expiry of one year reckoned from the date of the policy. The facility of dating back of the policy was allowed by the LIC within the same financial year on the proposer opting for the same at the time of proposal for purposes like benefit of lower age (so that premium will be lower), availing Income tax rebate for maximum premium amount in the particular financial year etc. u/s 45 of the Insurance Act date on which the Policy of Insurance (contract of insurance) becomes effective shall be the date of accepting the proposal from which date alone the risk under the proposal is covered. Even in cases of ante-dating the risk, the date of completion of the contract will be the same and it cannot be a date prior to the date of proposal. Since the plaintiff had incurred the contingencies referred to Clause 11(a) within the lien period of one year, the plaintiff is not eligible for Benefit B of the Policy.

4. The court below framed the following four issues for trial:

1. Is the suit not maintainable?

2. What is the date of commencement of the policy?

3. Has the plaintiff no cause of action?

4. Reliefs and costs?

5. On me side of the plaintiff he examined himself as PWI and Exhibits Alto A14 were got marked. On the side of the defendant, the Branch Manger was examined as DW1 and Exhibits B1 to B3 were got marked.

6. The learned Sub Judge, after trial, as per judgment and decree dated 31.01.1998, decreed the suit as prayed for after holding that the date of the Policy is not 8.2.1994, but 28.10.93, and so construed, the surgery undergone by the plaintiff was not within the lien period envisaged under Clause 11(a) of the terms and conditions of Ext.A1 Policy. It is the said judgment and decree which is assailed in this appeal by the defendant LIC.

7. I heard Advocate Sri. S. Easwaran, the learned Counsel appearing for the appellant/defendant and Advocate Shri. Azad Babu the learned Counsel appearing for the respondent/plaintiff.

8. The learned Counsel for the respondent/plaintiff made the following submissions before me in support of the judgment and decree:

The date of policy and the date of issuance of the policy are not the same. It was on 22.11.1993 that the first premium was paid pursuant to the proposal submitted on 21.11.1993. Therefore, the date of payment of the first premium should be treated as the date of the policy and if so, the lien period of one year starts from 22.11.1993 and it expired on 22.11.1994. The surgery was admittedly performed on 23.11.1994 which is outside the lien period. In Life Insurance Corporation of India Vs. Mani Ram, , the policy was taken on 21.08.1995 and the First premium also was paid on that date. But the policy was dated back to 28.04.1995. The second premium was held to be due on 28.04.1996, that is, the date from which the policy was back-dated. If the said principle is to be applied here, then the policy was back-dated with effect from 28.10.1993 in which case also the open heart surgery undergone by the plaintiff on 23.11.1994 would be beyond the lien period of one year from 28.10.1993. In any view of the matter, the interpretation placed by the court below does not call for any interference in the light of the contentions raised in the written statement and the judgment and decree do not call for any interference.

9. I am afraid that I cannot agree with the above submissions made on behalf of the plaintiff/respondent.

10. The relevant dates are as follows:

Proposal was submitted on - 21-11-1993 First premium of Rs.7708/- was paid on - 22-11-1993 Risk under the policy commenced on - 28-10-1993 Proposal accepted and first premium - 01-12-1993 received on Date of policy (which is the date - 08-02-1994 of issue of the policy) Date of maturity - 28-10-2008 One year from the date of policy - 08-02-1995 would expire on Open heart and by-pass surgery on - 23-11-1994

11. The dispute in mis case is as to the interpretation of Clause 11(a) of the terms and conditions under Ext.A1 policy, Clause 11(a) reads as follows:

11(a). Benefit (B) of the Policy Schedule is not applicable if any of the contingencies mentioned in Para 11(b), occurs (i) at any time on or after the date '' on which the risk under this policy is commenced but before the expiry of one year reckoned from the date of its policy or (ii) .one year from the date of revival.

12. There is no dispute that the Benefit (B) under the Policy Schedule includes open heart and by-pass surgery as one of the contingencies made mention of in Clause 11(a). It is true that the risk under the policy commenced on 28.10.1993 as insisted by the plaintiff. Ext.B2 is the proposal Form signed by the plaintiff. One of the columns in Ext.B2 reads as follows:

If policy is to be dated back, indicate date

Against this claim, the date inserted is 28.10.1993. In the lower column, this date 28.10.1993 is shown as the "risk date". This cannot be the date of the policy. On the face of the policy also, the date of policy shown is 8th February, 1994. In the schedule obtained at the facing page of Ext. Al policy, the policy number is shown as 390015924. The sum assured is Rs. 1 lakh. The date of commencement of the risk is shown as 28.10.1993 and the date of maturity is shown as 28.10.2008.

13. A reading of Clause 11(a) extracted above will clearly go to show that the contract makes a distinction between the date on which the risk under the policy is commenced and the date of the policy. The lien period during which any of the eventualities referred to in Clause 11(b) takes place, to be excluded for the purpose of the benefit starts from the date of commencement of the risk under

the policy which both by Ext.B2 proposal Form as well as by Ext. Al policy is 28.10.1993. But the said date could never be treated as the date of policy because the policy will come into effect only when the proposal is eventually accepted by the insurer and the acceptance is communicated to the applicant. In LIC of India v. R. Vasireddy AIR 1984 SC 1014, the apex Court observed as follows:

A contract of Insurance will be concluded only when the party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer. Though in certain human relationships silence to a proposal might convey acceptance but in the case of Insurance proposal, silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance. Mere delay in giving answer cannot be construed as an acceptance, as prima facie, acceptance must be indicated to the offered. Similarly, the mere receipt and retention of premium until after the death of the applicant or the mere preparation of the policy document is not acceptance.

In LIC of India v. Prassanna Devaraj 1994(2) KLT 541, the question before a Division Bench of this Court was as to whether the deposit of premium amount in suspense account at the time of proposal would amount to acceptance of the proposal so as to create a concluded contract. It was held that in the absence of any material to show that there was acceptance of the proposal creating a concluded contract between the parties, the contention on behalf of the insured was untenable. In LIC of India v. Annamma 1999 (3) KLT 142, another Division Bench of this Court held that the acceptance of the insurance proposal is complete only when it is indicted to die offer or and that silence or receipt and retention of the premium by the insurer cannot be construed as acceptance.

14. In Life Insurance Corporation of India and Another Vs. Shri Dharam Vir Anand, , a three Judges Bench of the Apex Court had to interpret Clause 4(B) of the terms and conditions of the Insurance policy in that case. The said Clause 4(B) reads as follows:

4B. Notwithstanding anything mentioned to me contrary, it is hereby declared and agreed that in the event of death of life assured occurring as a result of intentional self-injury, suicide or attempted suicide, insanity, accident other than an accident in a public place or murder at any time, on or after the date on which the risk under the policy has commenced but before the expiry of three years from the date of this policy, the Corporation''s liability shall be limited to the sum equal to the total amount of premiums (exclusive extra of premiums, if any), paid under the policy without interest. Provided that in case the life assured shall commit suicide before the expiry of one year reckoned from the date of this policy, the provisions of the clause under the heading "Suicide" printed on the back of the policy (sic will apply).

After interpreting the said clause, the Apex Court observed as follows:

In construing a particular clause of the contract, it is only reasonable to construe that the words and the terms used therein must be given effect to. In other words, one part of the contract cannot be made otiose by giving a meaning to the policy of the contract. Then again, when the same clause of a contract uses two different expressions, ordinarily those different expressions convey different meanings and both the expressions cannot be held to be conveying one and the same meaning. Bearing in mind the aforesaid principle of construction, if Clause 4-B of the terms of the policy is scrutinized, it becomes crystal clear that the date on which the risk under the policy has commenced is different from the date of the policy. In the case in hand, undoubtedly the date on which the risk under the policy has commenced is 10.05.1989 but the date of the policy is 31.03.1990. On which date the policy had been issued. Even though the insurer had given the option to the insured to indicate as to whether the policy is to be dated back and the insured indicated that the policy should be dated back to 10.05.1989 an4 did pay the premium for that period, thereby the risk under the policy can be said to have commenced with effect from 10.05.1989 but the date of the policy still remains the date on which the policy was issued, i.e., 31.03.1990. The death of the life assured having occurred as a result of suicide committed by the assured before the expiry of three years from the date of the policy, the terms contained in Clause 4-B of the policy would be attracted and, therefore, the liability of the Corporation would be limited to the sum equal to the total amount Of premium paid under the policy without interest and not the entire sum for which the life had been insured.

In the case before the Apex Court also, the relevant dates were "the date on which the risk under the policy had commenced" and "the date of the policy".

15. In Ext.A1 policy also, the very same words are employed and it is difficult to give an interpretation different from the one given by the Apex Court to the said words. If so, the lock-in period during which Benefit (B) under Ext. A1 policy of insurance would commence would be from 28.10.1993 and the outer date of one year from the date of policy (i.e. 08.02.1994) would be 08.02.1995. In other words, if any of the contingencies referred to in Clause 11(b) were to happen between 28.10.1993 and 08.02.1995, then the insured would not be eligible for Benefit (B) under the contract. Admittedly, the open heart and by-pass surgery in this case was 23.11.1994. It is within the lock-in period referred to above. If so, the interpretation placed by the learned Subordinate judge that 28.10.1993 is the date of policy and the resultant decree passed on that basis cannot be sustained. The judgment and the decree passed by the court below are accordingly set aside and the suit will stand dismissed.

16. In the result, this appeal is allowed as above. However, having regard to the peculiar facts and circumstances of the case the parties are directed to bear their respective costs.

17. Taking into account the fact that the plaintiff is a dental surgeon who had undergone a major operation of open heart and by-pass surgery on 23.11.1994,

I am sure that the matter will receive a lenient consideration at the hands of the LIC of India. Hence notwithstanding the decree, it is open to the LIC to take a. decision as to whether the whole or part of the Benefit (B) under Ext. Al policy could be paid to the plaintiff on humanitarian considerations, The LIC should also avoid using such complicated terms and conditions in their contracts which even the courts find it difficult to decode so that every applicant is able to understand the impact of each and every clause in the contract without any assistance from any quarters whatsoever.

Dated this the 20th day of August, 2009.